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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 112

TADAYASU ABO, MARY KANAME FURUYA, ETC., ET AL., PETITIONERS

v.

J. HOWARD MCGRATH, AS THE ATTORNEY GENERAL OF THE UNITED STATES, ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 410-427) is reported *sub nom. Tadayasu Abo* v. *Clark,* at 77 F. Supp. 806; the opinion of the Court of Appeals for the Ninth Circuit (R. 598-609) is reported at 186 F. 2d 766.

JURISDICTION

The judgments of the court of appeals were entered on January 17, 1951 (R. 609-611). Petitioners' motions for rehearing were denied on February 27, 1951 (R. 611). Petitioners' time within which to file petitions for writs of certiorari was extended by orders of Mr. Justice Douglas, dated April 17 and May 14, 1951, to and including June 11, 1951 (R. 612). The petitions for writs of certiorari were filed on June 11, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in holding clearly erroneous the findings of the District Court that all of the petitioners renounced their American citizenship through duress and coercion, and in remanding the case for a new trial on that issue.

2. Whether petitioners' renunciations of American citizenship should be set aside on the ground that they were made while petitioners were detained, allegedly in violation of the Constitution, at the Tule Lake Relocation Center.

3. Whether Section 401(i) of the Nationality Act of 1940, as amended—authorizing voluntary renunciations, within the United States, of American citizenship, during wartime—is unconstitutional on the ground that it is discriminatory or was discriminatorily applied.

STATUTE INVOLVED

The Act of July 1, 1944 (58 Stat. 677) adding subsection (i) to Section 401 of the Nationality Act of 1940 (8 U.S.C. 801(i)) reads in pertinent part:

> [A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:]
>
> (i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense:

STATEMENT [1]

The Court is familiar, in general, with the events leading up to, and the reasons for, the Japanese evacuation and relocation program during World War II, and these need not be repeated here. See *Hirabayashi* v. *United States*, 320 U.S. 81; *Korematsu* v. *United States*, 323 U.S. 214; *Ex parte Endo*, 323 U.S. 283. Petitioners are persons of Japanese ancestry born in the United States who, during the war, renounced their United States citizenship, pursuant to Section 401 (i) of the Nationality Act of 1940, as amended (8 U.S.C. 801(i)) (*supra*, p. 3), while at the Tule Lake Relocation Center.

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[1] See also the Government's cross petition for a Writ of Certiorari, No. 121, this Term, pp. 6-10, 25-28.

These two proceedings to cancel these renunciations were brought after the defeat of Japan.[2]

1. *The Tule Lake Relocation Center.* The vast majority of the evacuees were sent to relocation

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[2] Since the issues raised in the *Abo* and *Furuya* cases are in substance identical, it has been stipulated not to print a separate record in the latter case (R. 598, 616). There are 4315 individual plaintiffs in the two combined causes (R. 598); the petitions for writs of certiorari were filed on behalf of 3429 petitioners (Petition, p. 2); the difference between the number of plaintiffs and of petitioners may be explained by the fact that many of the plaintiffs were not aggrieved by the decision below (R. 605-606, 608, 609); see also Petition, p. 2, fn. 1.

The respondents, apart from the Attorney General, are:

1. Frank J. Hennessy as United States Attorney for the Northern District of California. Mr. Hennessy ceased to hold office on May 14, 1951, and was on that day succeeded by Chauncey F. Tramutolo. A motion to substitute Mr. Tramutolo for Mr. Hennessy has been filed in *McGrath* v. *Abo*, No. 121.

2. Watson B. Miller, as the Commissioner of Immigration and Naturalization. Mr. Miller ceased to hold office on June 9, 1950. He was succeeded on June 10, 1950, by Argyle R. Mackey as Acting Commissioner. Mr. Mackey took office as Commissioner on April 23, 1951. A motion to substitute Mr. Mackey for Mr. Miller, in the event that the action had not abated against the latter, has been filed in *McGrath* v. *Abo*, No. 121.

3. Ivan Williams, as Officer-in-Charge of the Tule Lake Center, Newell, Medoc County. Mr. Williams ceased to hold office when Tule Lake Center was closed in April, 1946. His functions, as far as these cases are concerned, apparently were taken over by the District Director of the United States Immigration and Naturalization Service.

4. Bruce Barber as District Director of the United States Immigration and Naturalization Service for the Northern District of California.

5. The complaint was also filed against the Secretaries of State, the Treasury and the Interior and certain persons acting under their authority. The Court of Appeals dismissed the complaint as to them (R. 603); petitioners do not appear to seek a reversal on that ground.

centers in which they were interrogated in order to determine whether or not they were loyal to the United States. Those who failed to pass the test were segregated at the Tule Lake Relocation Center (R. 156-158).[3] The main reasons for segregation were requests for repatriation to Japan and the refusal to answer in the affirmative Question 28 of a questionnaire, which called for readiness to swear to unqualified allegiance to the United States and to foreswear any form of allegiance or obedience to the Japanese Emperor (R. 149-150; 570-572).[4]

It should be pointed out, however, that a considerable percentage of the population at Tule Lake[5] were not segregated for loyalty reasons, but were interned there either because they had requested permission to stay at that Center after it had been converted to a segregation center (R. 151), or because they accompanied a segregated member of their family.

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[3] Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701, etc., pp. 52-58; *The Evacuated People*, A Quantitative Analysis, U. S. Dept. of the Interior, pp. 166-175.

[4] *Korematsu* v. *United States*, 323 U. S. 214, 219. About 20,000 evacuees requested repatriation to Japan; about 9,000 refused to answer Question 28 in the affirmative. *The Evacuated People*, pp. 156-165. It was contended later that the failure to answer Question 28 in the affirmative was not necessarily indicative of disloyalty (R. 149). Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701, etc., pp. 36-40.

[5] Probably about one-third. *The Evacuated People*, pp. 166, 169, Table 77.

The quarters at Tule Lake were a modification of Army camp barracks.[6] Living conditions apparently were primitive, and most of the segregees were subject to idleness. Cf. *Acheson* v. *Murakami*, 176 F. 2d 953, 955-957 (C.A. 9). But these drawbacks were largely sins of omission caused by the inability to make better provisions in a war economy.[7] There are no charges of systematic intentional brutality on the part of the camp authorities, and there can be no comparison between Tule Lake and the concentration camps maintained by totalitarian powers. As a matter of fact, one of the motives given by renunciants for their act of renunciation was the desire to be permitted to stay at Tule Lake rather than be exposed to the hostile outer world.[8]

In view of the high percentage of applicants for repatriation at Tule Lake, it was not astounding that the leadership among the camp population fell into the hands of a group of ardent pro-Japanese nationalists who sought to prepare inhabitants spiritually and socially for the return to Japan. Thus, Japanese schools sprang up, Emperor worship was introduced, the young men engaged in

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[6] *The Spoilage*, pp. 29-30. *The Spoilage* by Dorothy S. Thomas and Richard S. Nishimoto, which is highly critical of the evacuation program, was introduced into evidence at petitioners' request, R. 413.

[7] It should not be overlooked, moreover, that all standards of living are affected by wartime conditions. War exacts its toll from everyone. *Korematsu* v. *United States*, 323 U. S. 214, 219-220.

[8] *Infra*, p. 9.

para-military drills and wore Japanese style dress and haircut (R. 161, 163, 167-168). This militant pro-Japanese element sought to proselytize those camp inhabitants who were less sanguine about the return to Japan and those who were loyal to the United States, using not only methods of persuasion but also strong social and physical pressure (R. 161-162, 324-397).[9]

2. *The renunciations.* On July 1, 1944, Congress amended the Nationality Act of 1940 by adding to Section 401 a subsection (i), (*supra,* p. 3), which authorized American citizens in time of war[10] to give up their American nationality within the United States by making a formal written renunciation if the Attorney General should approve such renunciation as not contrary to the interests of national defense.[11]

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[9] Cf. the findings of fact in *Acheson* v. *Murakami*, 176 F. 2d 953, 961-962 (C.A. 9).

[10] Pursuant to Sec. 3 of the Joint Resolution of July 25, 1947 (61 Stat. 449, 451, 454), the state of war was terminated, for the purposes of Sec. 401(i) of the Nationality Act, as of July 25, 1947.

[11] Prior to the Act of July 1, 1944, American nationality could be formally renounced only outside the United States, since it was felt that a person should not be able to shed the burdens of allegiance and still retain the benefits of residing in this country. Hearings before the Committee of Immigration and Naturalization, House of Representatives, 76th Congress, 1st Session on H.R. 6127 superseded by H.R. 9980, p. 492. It was, however, felt that in time of war, American citizens who were also nationals of an enemy country should be able to give up their American nationality if they felt that they owed primary allegiance to the enemy, and thus place themselves and the United States in an unambiguous position. Cf. Statement of Attorney General Biddle, Hearings before a Special Committee on Un-American Activities, House of

Regulations under this Amendment were issued on October 6, 1944[12] (R. 164), and shortly afterward, the Department of Justice was flooded with applications for renunciation (R. 164). The Department—fearing that some of these applications might have been prompted by mistake, coercion, or reasons other than the genuine desire to give up allegiance to the United States—decided to make the renunciation procedure far more cumbersome than required by the statute (R. 165). An inspection of the Tule Lake Center convinced the officials of the Alien Enemy Control Unit of the War Division of the Department of Justice that members of the nationalist pro-Japanese faction were putting considerable pressure on others to make them renounce their American nationality (R. 168-170). In order to counteract this coercion, the Department of Justice secured the immediate removal from Tule Lake of the ringleaders, after they had renounced their nationality (R. 168-169, 182-184). In addition, the Department interrogated every renunciant so as to determine whether his renunciation had been caused by intimidation, outright coercion, mistakes, or other reasons inconsistent with a free and voluntary election to give up a burdensome and undesired allegiance (R. 172-179).

Representatives, 78th Cong., First Sess. on H. Res. 282, Vol. 16, pp. 10071-10080 at 10077; Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701, etc., p. 42; S. Rep. 1029, 78th Cong., 2d Sess.

[12] 9 F.R. 12241.

All persons of Japanese descent, except the applicant, were excluded from these hearings to avoid any fear of reprisal or denunciation (R. 177). The responses given by the vast majority of the renunciants stated that at that time they were affirmatively loyal to Japan, that they believed in and hoped for a Japanese victory, and that they were actively disloyal to the United States (R. 185, 212-213, 215, 218, 219-220).

It developed later that many renunciants had deceived the Department of Justice officials (R. 589)[13], and that they had been motivated in part by fear of reprisals on the part of the nationalist groups (R. 396-397; *Acheson* v. *Murakami,* 176 F. 2d 953, 958); by utilitarian motives, such as the belief that Japan would win the war and that a pro-Japanese record would be advantageous (R. 204; *The Spoilage,* p. 326); by the desire to avoid the draft (R. 202, 386-389, 395; *The Spoilage,* pp. 317, 326); by the fear of being discharged from Tule Lake and forced to resettle in hostile surroundings (R. 171, 200-201, 395; *The Spoilage,* pp. 345-350); or by the desire to keep intact families in which one or more members had renounced United States nationality (R. 395; *The Spoilage,* pp. 350-351). In some instances, the renunciation resulted from a reaction to pre-war racial discrimi-

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[13] This deception was facilitated by the "college of renunciation knowledge" set up by the pro-Japanese organization. Findings of Fact of the District Court in *Acheson* v. *Murakami,* 176 F. 2d 953, 963.

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nation, resentment at the evacuation program, the despair and hysteria of camp life [14] and the hardship suffered there, or the feeling that the United States had failed them (R. 188, 393-394; *The Spoilage*, pp. 348-349; *Acheson* v. *Murakami*, 176 F. 2d 953, 958 (C.A. 9)).

In spite of all these pressures and motivations, the number of renunciations was relatively small. Approximately 72,650 of the evacuees were American citizens by birth.[15] Of these, 5,589, *i.e.*, less than 10%, renounced their United States nationality[16]; even at Tule Lake, with its high percentage of persons sympathizing with Japan to a larger or lesser degree (R. 199)[17], only 5,461, *i.e.*, less than one-half of the native-born camp population of approximately 12,500[18], took this definitive step.

3. *The proceedings below.* After the war had ended in victory for the United States, petitioners brought these proceedings to rescind their renunciations.[19] At that time, the United States had issued removal orders under the Alien Enemy Act of 1798 (1 Stat. 577, 50 U.S.C. 21) against the renunciants on the ground that they were enemy nationals. The instant proceedings were originally

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[14] Cf. R. 205-207.
[15] *The Evacuated People*, p. 67.
[16] *The Evacuated People*, p. 177.
[17] *Supra*, pp. 4-5.
[18] *The Evacuated People*, pp. 169-177.
[19] The first requests for cancellation of the renunciation were submitted in June, 1945 (R. 191), *i.e.*, after the defeat of Japan's Axis partner, Germany. The vast majority of the requests were filed only after the surrender of Japan (R. 192).

brought by 975 renunciants; 3,340 joined subsequently. While these civil actions were in progress, the Department of Justice conducted hearings as the result of which the removal orders were dropped against all but 302 of the renunciants.[20]

After both sides had moved for summary judgment and for judgment on the pleadings, it was stipulated to submit the case to the court on the documents and affidavits submitted, and that the proof be deemed closed, provided that the court should have the authority to order the production of further evidence when it deemed it necessary (R. 408 (a)-(b)). In its opinion, the District Court held that, at the time of their renunciations, the renunciants acted abnormally as the result of abnormal conditions not of their own making (R. 425). It realized, however, that certain of the renunciants had acted freely and voluntarily and, therefore, authorized the Government to designate any of the plaintiffs as to whom it desired to produce additional evidence (R. 422, 427).

Pursuant to this authorization, the Government submitted a detailed classification of the plaintiffs, indicating factors which had a definite bearing on the sincerity of his or her renunciation (R. 550-576). This tabulation showed that about 1400 of the plaintiffs had voluntarily returned to Japan,

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[20] Approximately 2,500 renunciants joined the actions at a time when the removal proceedings against them had been cancelled. See the Government's Cross-Petition in Nos. 121, 122, pp. 7-8.

after their renunciations, that many of petitioners had received their schooling there, were leaders or members of pro-Japanese pressure groups, had applied for repatriation to Japan prior to renunciation of United States nationality, or had failed to answer Question 28 (*supra*, p. 5) in the affirmative (R. 550-559, 562-563, 570). The District Court held that this comprehensive list did not comply with the directives contained in its opinion, struck it from the record, and ordered the entry of judgment in favor of *all* the plaintiffs. The findings of fact include a finding to the effect that the renunciation of each plaintiff had been secured by duress (R. 466).

While the appeal from this decision was pending, the Court of Appeals for the Ninth Circuit handed down its decision in *Acheson* v. *Murakami*, 176 F. 2d 953, holding that the plaintiffs in that case had renounced their nationality as the result of intimidation by pro-Japanese elements at Tule Lake and therefore should be restored to citizenship. The United States acquiesced in that decision and indicated that it would not oppose relief in future cases of this kind coming fairly within the *Murakami* case.[21]

In the instant case, the Court of Appeals affirmed the decision of the District Court with respect to

[21] Appendix, *infra*, pp. 25-28. By August 2, 1951, the Department of Justice had advised the State Department in 129 instances that in its opinion the case of a renunciant came within the scope of the *Murakami* decision.

the plaintiffs who were minors or incompetents at the time of their renunciation (R. 605-606), and those against whom the only charge was that they had gone to Tule Lake in order to stay with family members (R. 608-609).[22] With respect to the remaining adult renunciants, it reversed the judgment below on the ground that the record disclosed with certainty that many of the petitioners had voluntarily renounced their nationality, and had been disloyal to the United States, and that many became interested in the cancellation of their renunciations only when the collapse of Japan indicated that the material living conditions in the United States were vastly superior to those in Japan, and finally that many of those petitioners who had spent their formative years in Japan were definitely pro-Japanese (R. 604). It pointed out that it was as much the duty of the Government to oppose the restoration of citizenship to the disloyal as to reinstate the victims of duress. (R. 605). It therefore remanded the cause for further proceedings in the District Court (R. 609).

ARGUMENT

Petitioners have no cause to complain of the correctness of the decision of the court below remanding the proceedings for a determination whether

[22] See the Government's cross-petition in No. 121. The court also upheld its jurisdiction with respect to those plaintiffs who were no longer subject to removal and even as to those who had joined the proceedings after the removal orders against them had been cancelled.

the individual petitioners had renounced their American nationality voluntarily or under circumstances which justify a recission;[23] nor is there a conflict or any other ground for review by this Court.

1. The findings of the District Court that all of the renunciations had been caused by duress and coercion was clearly erroneous and it would have been an error on the part of the Court of Appeals not to set it aside. Rule 52, Federal Rules of Civil Procedure, provides that findings of fact shall not be set aside unless "clearly erroneous". This has been interpreted to mean that "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed". *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395.

a. The question is not whether some of the petitioners gave up their American nationality under duress,[24] but whether it has been shown that every petitioner has renounced his citizenship under duress; obviously, a wrong committed toward one of the petitioners can not enure to another one's benefit. Cf. *Hartsville Oil Mill* v. *United States*, 271 U. S. 43, 48. The record on the whole, and the trial judge's opinion (R. 422), show conclusively that the renunciations were not coerced in every

[23] On the contrary, see the jurisdictional and evidentiary issues raised by respondents in their cross-petition in No. 121.
[24] This point has been conceded, *supra*, p. 12.

instance, but to the contrary that many of the petitioners owed allegiance to Japan to the extent that they voluntarily returned there and coerced others into renunciations, that others had spent their formative years in that country and presumably preferred it over this nation, and that many had given up their nationality out of resentment [25] or purely opportunist motives such as to be on the winning side or to avoid the draft.[26] This variety of motives has been established convincingly by the affidavits of Mr. Burling [27] (R. 147-210, at 198-207) and of Miss Hankey [28] (R. 324-397, at 391-397) and also by the conclusions reached in *The Spoilage,* Ch. XIII.[29] The sole evidence to the contrary are five affidavits submitted by petitioners (R. 223-317, cf. R. 413) which purport to know the state of mind of each of the 4,315 plaintiffs—apparently also of those plaintiffs who joined the proceedings after the execution of the affidavits—but significantly fail to explain why these condi-

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[25] Note the longstanding literary tradition that resentment does not excuse or invalidate an act of expatriation. Edward E. Hale, *The Man Without A Country.*

[26] Opportunist motives do not justify the recission of a renunciation. *Savorgnan* v. *United States,* 338 U. S. 491, 502; *Doreau* v. *Marshall,* 170 F. 2d 721, 724 (C.A. 3).

[27] Mr. Burling's affidavit was characterized by the District Court as "a fair, temperate and dispassionate statement of the circumstances backgrounding the renunciations" (R. 422-423).

[28] Miss Hankey was an anthropologist unconnected with the government; her affidavit, on the whole, is highly critical of the Government and sympathetic with the problems of the segregees.

[29] As pointed out above (fn. 6, *supra,* p. 6), *The Spoilage* was introduced into evidence at petitioners' initiative.

tions failed to affect those evacuees and segregees who decided to retain their United States nationality.

The decisive finding of fact that *all* renunciations were coerced (R. 466) is erroneous according to the very standard set by the District Court itself in its opinion, which held (R. 422):

> Only a comparatively small number of renunciants acted with complete freedom of action, as evidenced by their subsequent acts in requesting repatriation followed by actual repatriation to Japan.[30]

Still the court disregarded the offer of proof that about 1,400 plaintiffs had voluntarily returned to Japan (see *supra*, pp. 11-12).

b. The decision of the trial court was apparently based on its assumption that a "class showing" had been made to the effect that in the vast majority of the cases the renunciations had been executed under duress (R. 426). This constituted error as the court below properly pointed out (R. 606-609).

First, in contrast to the original complaint (R. 6) the amended complaint (R. 92-121) was not filed as a class suit.[31] Second, even if this were a class action, since there has been a diversity of possible motivations, the individual frames of mind of the several plaintiffs at the times they renounced their nationality cannot, under our philosophy of gov-

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[30] Actually, the requests for repatriation preceded renunciation and were one of the reasons for segregation at Tule Lake; see *supra*, p. 5.

[31] See the Government's cross-petition, No. 121, at pp. 15-19.

ernment, be regarded as common questions of law or fact (Rule 23(a)(3)).[32] The impelling causes for renunciation have to be established separately as to each individual plaintiff; proof as to a majority is insufficient as to the others. And the massing of thousands of plaintiffs plainly does not confer any additional substantive rights upon them. *California Apparel Creators* v. *Wieder of California*, 162 F. 2d 893, 897 (C. A. 2), certiorari denied, 332 U. S. 816. To attribute fear or a feeling of compulsion to all of the petitioners solely because certain of them were so moved partakes of some of the same dangers as the converse concept of guilt by association.

It is true that the determination of the motives of each of the 4,315 plaintiffs may create problems in the administration of justice in the Northern District of California. This, however, is the direct consequence of the trial court's decision to permit this case to assume these proportions, not of any intransigeance on the part of respondents, and the difficulties can undoubtedly be overcome by cooperation of court and counsel.[33]

The renunciation of nationality is a serious mat-

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[32] Cf. Mr. Justice Douglas concurring in *Hirabayashi* v. *United States*, 320 U. S. 81, 107-108.

[33] The procedure upon remand will be greatly simplified, for example, by respondents' willingness to accept affidavits as to the fact of coercion rather than to insist upon strict proof. See Appendix, *infra*, pp. 25-26, 28.

With respect to the issues petitioners seek to raise concerning a proper interpretation of the stipulation (Pet. 44-47), we do not believe that they are of the kind which call for the exercise of the supervisory jurisdiction of this Court. The Court of Appeals did not read the stipulation as petitioners do, and apparently the District Court did not do so, either.

ter not easily to be set aside. *Savorgnan* v. *United States,* 338 U. S. 491. Even more so is the restoration of nationality to persons adhering to totalitarian principles, whether of the right or of the left, especially since their naturalization is now prohibited. Internal Security Act of 1950, Sec. 25, 8 U. S. C., Supp. IV, 705, amending Sec. 305 of the Nationality Act of 1940, 8 U. S. C. 705. Accordingly, it is important that the petitioners' status should be individually determined on the basis of the actual facts, so far as they can reasonably be found, and not by the broad and uncritical generalities employed by the District Court.

2. Petitioners also claim that their detention at Tule Lake was illegal and in violation of constitutional guarantees, and that, therefore, any statement made by them during this illegal confinement was void. We submit, however, that petitioners' detention at Tule Lake was not illegal and, second, that, even if it were so, this circumstance would not automatically nullify the renunciations.

a. This Court previously has passed on certain phases of the evacuation program. *Hirabayashi* v. *United States,* 320 U. S. 81; *Korematsu* v. *United States,* 323 U. S. 214; *Ex parte Endo,* 323 U. S. 283. In the latter case, the Court held illegal the continued detention of a citizen whose loyalty to this country had been conceded. Petitioners do not come within this classification. Their loyalty was

contested; as to all but 58 of them (R. 608), there was some act or circumstance which cast serious doubt on their true allegiance to the United States (R. 550-559). The great majority of the residents at Tule Lake had been segregated there because they had applied for repatriation to Japan or because they had refused to answer Question 28 in the affirmative (*supra*, p. 5). Under the *Korematsu* decision, these acts were certainly sufficient to warrant internment at that time.

Petitioners *now* submit explanations for these acts. They claim, for example, that an affirmative answer to Question 28 might have been construed as an admission that they owed allegiance to the Emperor of Japan (R. 228-229). Even if this be an accurate description of their inner feelings, it can hardly serve to illegalize their detention. Ninety percent of the evacuees did not make this fine spun rationalization and chose to testify to their allegiance to this country in spite of the supposed danger. The burdens of citizenship in wartime are heavy. *Korematsu* v. *United States*, 323 U. S. 214, 219-220. See also *Lichter* v. *United States*, 334 U. S. 742, 767. The Government could rightfully segregate and detain the minority of citizen evacuees who objectively acted in such an uncooperative and hostile manner as to cast serious doubts on their friendly disposition toward the United States. The residents of the other evacuation centers had suffered similar hardship and pri-

vations as the segregees at Tule Lake. The facts that these other detainees openly avowed their loyalty and that there were hardly any renunciations outside of Tule Lake indicates that the segregation was justified, at least initially, and also tends to show that many of the segregees did not bear the same unqualified allegiance to the United States as the other evacuees (cf. R. 198-199).

b. But even if it were assumed *arguendo* that the petitioners' detention at Tule Lake constituted a violation of the Bill of Rights, such illegality would not automatically void their renunciations. Petitioners cite cases like *Bram* v. *United States,* 168 U. S. 532; *Weeks* v. *United States,* 232 U. S. 383; *McNabb* v. *United States,* 318 U. S. 332; *Upshaw* v. *United States,* 335 U. S. 410; and *Lustig* v. *United States,* 338 U. S. 74, as their authority for the proposition that the renunciations are void. These decisions, however, deal with the question of the admissibility of evidence, not with the different problem whether a voluntary statement has the legal effect it was intended to have. We submit that there is a wide gap between the procedural inadmissibility of evidence secured through violation of a constitutional or statutory provision,[34] and the substantive validity of a unilateral or contractual transaction which merely happens to have occurred

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[34] The taint of illegality of improperly obtained evidence is waived by the failure to make a timely motion to suppress. *Segurola* v. *United States,* 275 U. S. 106; *Garhart* v. *United States,* 157 F. 2d 777, 779 (C.A. 10).

during a period when a person's rights were otherwise being violated.[35]

Moreover, the unlawful search-and-seizure and illegal-detention cases are hardly applicable even by way of analogy. The federal search-and-seizure exclusionary rule is judicially implied from the command of the Fourth Amendment, but it is not required by the Fourteenth, although the latter incorporates the substantive right granted by the former. *Wolf* v. *Colorado,* 338 U. S. 25, 28-29. And the outcome of *McNabb* v. *United States,* 318 U. S. 332, was based upon the clear violation by federal law enforcement officers of an express statutory command (at 341-345), and reflected the power of this Court to supervise the administration of criminal justice in the federal courts (at 340). In the instant case, the officials involved acted under, rather than in defiance of, federal legislation (Act of March 21, 1942, 56 Stat. 173, and Sec. 401(i) of the Nationality Act, 58 Stat. 677, 8 U. S. C. 801(i), *supra,* p. 3), and, in addition, it cannot be said that the Court has ever exercised similar policing powers with respect to extra-judicial proceedings, such as those involved here.

3. In renouncing their American nationality, petitioners availed themselves of Sec. 401(i) of the Nationality Act of 1940 (8 U.S.C. 801(i)) which was added by the Act of July 1, 1944 (58 Stat. 677), *supra,* p. 3. They now claim that this Act consti-

[35] On this point, it must be assumed that the renunciations were voluntary.

tutes discriminatory class legislation, and, therefore, is unconstitutional. The simplest answer to this contention is that, unlike the Fourteenth Amendment, the Fifth does not contain an equal protection clause and prohibits only legislation which is so arbitrary and injurious in its character as to constitute a denial of due process. *Detroit Bank* v. *United States,* 317 U. S. 329, 337-338; *Hirabayashi* v. *United States,* 320 U. S. 81, 100.

Sec. 401(i) patently does not constitute a denial of due process. It is nondiscriminatory on its face. It does not compel anyone to perform or omit an act or to apply for a license which according to a preconceived plan was to be withheld in a discriminatory manner. Cf. *Yick Wo* v. *Hopkins,* 118 U. S. 356. To the contrary, the statute is purely permissive in nature. It permits all citizens to avail themselves of the right of expatriation which Congress long ago declared is a natural and inherent right, indispensable to the enjoyment of the right of life, liberty and the pursuit of happiness (R. S. 1999, 8 U.S.C. 800).[36]

It is true that, in view of the circumstances which

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[36] It may even be that the failure to enact such a law might have been considered a violation of the "right to expatriation." As pointed out above (*supra,* fn. 11, pp. 7-8), the Nationality Act of 1940 did not authorize the renunciation of American nationality by an act performed within the United States. In view of the difficulties of leaving the country in time of war (cf. *Ludecke* v. *Watkins,* 335 U. S. 160, 166), but for the enactment of Sec. 401(i), a resident who at the same time was a national of the United States and of an enemy country and who felt that he owed his sole allegiance to the latter would have been prevented from renouncing a hated allegiance.

led to petitioners' segregation at Tule Lake (*i. e.* a petition for expatriation to Japan or failure to answer Question 28 in the affirmative (*supra*, p. 5)), the Department of Justice expected that a certain number of the segregees would avail themselves of the new privilege granted by the Act, but there is nothing to indicate that the application of the statute was to be limited to persons of Japanese extraction.[37] The legislative history shows that the Department of Justice carefully protected petitioners' constitutional rights when proposed bills made a mere negative answer to Question 28 an automatic act of expatriation,[38] and insisted that American nationality could be forfeited only by an additional voluntary act of renunciation.[39] Moreover, as has been shown above (pp. 8-9), the Department of Justice took the greatest precautions to insure that the renunciations were voluntary. Unfortunately, these efforts were not totally successful and pro-Japanese elements were able

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[37] R. 178 indicates that persons of non-Japanese ancestry were given renunciation hearings. The legislative history of Sec. 401(i) shows plainly that it was to apply to all citizens, regardless of their racial origin, even if the special problems of the segregees were the immediate cause which prompted the enactment of the bill. Hearings before the Committee on Immigration and Naturalization, House of Representatives, 78th Cong., 2d Sess., on H.R. 2701 etc. (hereinafter referred to as Hearings), p. 43; 90 Cong. Rec. 1789, 1982, 1986, 1989-1990, 1991.

[38] Hearings, pp. 34-64, 90 Cong. Rec. 1782-1789; 1981-1992.

[39] Hearings, p. 45; cf. p. 64. Cf. also 90 Cong. Rec. 1786, 1788, where fears were expressed that the bill proposed by the Department of Justice would be futile because the segregees would refuse to apply for renunciation.

to coerce others into renouncing their American nationality (*supra,* pp. 9, 12).

The facts remain, however, that the Act is, on its face, plainly constitutional and that the executive sought to administer it in a constitutional manner. The unexpected interference by a hostile and disloyal element,[40] especially where it is vigorously counteracted by the Government, cannot be deemed discriminatory governmental action rendering the statute unconstitutional; this circumstance only raises the issue whether coercion was present in individual cases.

CONCLUSION

The decision below is correct, so far as petitioners are concerned. There is no conflict. It is respectfully submitted that the petitions for writs of certiorari be denied.

PHILIP B. PERLMAN,
Solicitor General.

HOLMES BALDRIDGE,
Assistant Attorney General.

SAMUEL D. SLADE,
HERMAN MARCUSE,
Attorneys.

SEPTEMBER, 1951.

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[40] Under the disposition of the case by the District Court, it is quite possible that nationality is restored to these very persons.

APPENDIX

DEPARTMENT OF STATE,
Washington, Nov. 29, 1949.

In reply refer to 130-Japanese/326.

Mr. H. G. MORISON,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

MY DEAR MR. MORISON:

Reference is made to your letter of October 25, 1949, File No. HGM/EEE, 146-54-5501, giving your views regarding the scope of the decision of the United States Court of Appeals for the Ninth Circuit.

You indicate in your letter that in view of the decision of the Solicitor General not to appeal the aforementioned decision, your Department has decided not to oppose relief in future cases of this kind coming fairly within the decision of the Court of Appeals. You also indicate that the cases of renunciants as to whom the Government files disclose evidence of loyalty to Japan or disloyalty to the United States are considered as not coming within the scope of the Murakami decision and that such cases will be opposed vigorously.

In view of the determination of the Solicitor General not to appeal the Murakami decision, this Department has reached the conclusion that it will recognize as an American citizen any Japanese renunciant who is able to bring his or her case within the meaning of the Murakami decision. For the purpose of determining whether an individual case comes within the meaning of the aforemen-

tioned decision, each renunciant will be required to execute an affidavit along the lines suggested in your letter. This affidavit, when received, will be forwarded to your office for an expression of your views in the matter and upon the receipt of your reply, this Department will determine whether the subject should be documented as an American citizen.

The procedure mentioned above will apply to renunciants who apply for American passports in this country as well as to renunciants who apply for documentation as American citizens abroad.

Sincerely yours,

(S.) R. B. SHIPLEY,
Chief, Passport Division.

Enclosure:
Copy of this letter.

For Immediate Release: Wednesday, October 26, 1949.

DEPARTMENT OF JUSTICE

Attorney General J. Howard McGrath today announced that the Department of Justice will not ask the Supreme Court to review the recent decision of the United States Court of Appeals for the Ninth Circuit holding that three American-born women of Japanese ancestry continue to be United States nationals notwithstanding the fact that they renounced their citizenship during the war after having been evacuated from their homes in the West Coast Defense Area and placed in the War Relocation Center at Tule Lake, California.

This decision was handed down on August 26, 1949, in the case of *Dean Acheson, as Secretary of State,* v. *Miye Mae Murakami et al.*

The Court's opinion, which was written by Chief Judge Denman, stressed the findings of Judge Mathes of the United States District Court at Los Angeles, that plaintiffs were loyal American citizens who had been subjected to propaganda and abuse by pro-Japanese pressure groups while they were residents at the Tule Lake Segregation Center.

The Court said that fear of reprisal from such groups caused some of the renunciations and that others renounced because they feared prejudice and possible violence at the hands of the white population if they left the center.

These considerations led the Court of Appeals to affirm the decision of the District Court that the plaintiffs' applications for passports had been erroneously denied by the State Department.

While the Court of Appeals seems to have indicated also, that the evacuation program was influenced by race prejudice, the Attorney General made it clear that he did not concur in that view. He feels, however, that the facts found by both the District Court and the Court of Appeals to the effect that, although the plaintiffs did not wish to do so, they were actually driven to their decisions to renounce by fears engendered by intimidating activities of pro-Japanese groups at Tule Lake or hostility of Caucasians outside the center, constituted a sufficient basis upon which the courts could reasonably hold that the renunciations were coerced and were, therefore, invalid.

In further amplification of the position of the

Department of Justice, Assistant Attorney General H. Graham Morison said that the decision of the Court of Appeals would be accepted and applied by it in all future cases of this kind brought within the jurisdiction of the courts.

This, of course, does not apply to any renunciant as to whom the Government files disclose evidence of disloyalty to the United States.

He explained that although application of the decision under the Attorney General's ruling requires the introduction of evidence as to the reasons for individual renunciations, the simplified procedure approved in that case could probably be made available to plaintiffs by stipulation in the vast majority of the cases coming within the scope of the decision, thus making it unnecessary for them to give oral testimony in Court.

Mr. Morison declined to express an opinion as to whether or not the Department of State would require other renunciants to obtain judicial adjudications of citizenship prior to the issuance of passports.

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